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# State v. Harris Appellant's Brief Dckt. 42461

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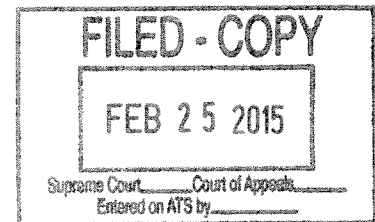
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
)  
Plaintiff-Respondent, )  
)  
vs. )  
)  
STEVEN BRIAN HARRIS, )  
)  
Defendant-Appellant. )  
\_\_\_\_\_ )

No. 42461  
District Case No. 2013-2286  
(Minidoka County)



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OPENING BRIEF OF APPELLANT

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Appeal from the District Court of the Fifth  
Judicial District of the State of Idaho  
In and For the County of Minidoka

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HONORABLE JONATHAN BRODY  
District Judge

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## II. STATEMENT OF THE CASE

### A. Nature of the Case

This is an appeal from Mr. Steven Harris' judgment of conviction for possession of methamphetamine, which was entered following Mr. Harris' conditional plea of guilty whereby he reserved his right to appeal the district court's denial of his motion to suppress.

### B. General Course of Proceedings

The evening of July 21, 2013, the security guard for the hotel where Mr. Harris was staying with his fiancée, Heather Heard, responded to a complaint that the couple were yelling at one another. Tr. Vol. 1 p. 7, ln. 7-23; p. 8, ln. 15-23; p. 9, ln. 4-25. Upon arrival, the guard observed the two arguing in a loud and boisterous manner but they stopped when he instructed them to do so. *Id.* at. p. 10, ln. 1-22; p. 11, ln. 1-25; p. 13, ln. 1-12. At about 10:30 p.m., the security guard heard Mr. Harris and Ms. Heard arguing in their room with the door to their room open and called the police to report a domestic disturbance. *Id.* at. p. 13, ln. 18 - p. 14, ln. 8; p. 67, ln. 18-22. The security guard explained his observations earlier in the day to the two reporting police officers and accompanied them to the room, which was on the ground floor with a door opening to the parking lot. *Id.* at. p. 14, ln. 24 - p. 15, ln. 12.

Through the propped open door and open curtains, both the officers and guard had a clear view into the lighted room, which revealed Ms. Heard laying on the bed next to the door and Mr. Harris wandering about the room. *Id.* at. p. 15, ln. 13-18; p. 16, ln. 1-13; p. 19, ln. 1; p. 28, ln. 25 - p. 29, ln. 13; p. 46, ln. 15 - p. 47, ln. 7; p. 62, ln. 21-24. As the security guard and officers approached the room, the officer observed Mr. Harris moving a cup around on a dresser. *Id.* at p. 46, ln. 18-22.

The officer approached the open doorway and informed Mr. Harris in conversational tone of voice that he was there to investigate a domestic dispute. *Id.* at. p. 47, ln. 16-25; p. 55, ln. 2-15. Mr. Harris explained that he and Ms. Heard had been arguing earlier about issues related to their children and that Ms. Heard had not taken her medication for bipolar disorder. *Id.* at. p. 48, ln. 11-23. The officer instructed Mr. Harris to wake Ms. Heard up so that he could “hear her side of the story.” *Id.* at. p. 49, ln. 9-10. In response to Mr. Harris’ instruction for her to get up, Ms. Heard made some movement and was very groggy, mumbling, and semi-responsive. *Id.* at. p. 60, ln. 9-16. The officer claimed that he was concerned for Ms. Heard’s well being because she was groggy when Mr. Harris told her to get up and he thus believed she might be intoxicated or have a heard injury. *Id.* at p. 56, ln. 21-25. The officer thus entered the room and ordered Ms. Heard to get up because he needed to speak with her. *Id.* at. p. 49, ln. 17-23. Upon entering the room, the officer observed a small cup on the dresser with two syringes soaking in liquid consistent with those used for medical purposes such as diabetics and used by people injecting drugs. *Id.* at. p. 51, ln. 3-15.

In response to the officer’s orders that she get out of bed, Ms. Heard pulled her knees to her chest and kneeled on the bed and the officer again ordered her to “come outside and speak with” him. *Id.* at. p. 49, ln. 20 - p. 50, ln. 4. Ms. Heard told the officer that she was trying to get up and to give “her a minute.” *Id.* at. p. 50, ln. 5-11; p. 62, ln. 25 - p. 61, ln. 2. As Ms. Heard swung her leg off the bed, a small plastic bag containing what later tested positive for methamphetamine fell in the middle of the bed in plain view. *Id.* at. p. 50, ln. 9-11.

Ms. Heard exited the room and during the ensuing conversation regarding her argument with Mr. Harris and drug use, the officer observed needle marks on her arms. *Id.* at. p. 51, ln. 1-2

; p. 52, ln. 14-15; p. 53, ln. 4-10. After speaking with Ms. Heard, the officer re-entered the room to again speak with Mr. Harris, who denied any knowledge that Ms. Heard was using drugs. *Id.* at p. 52, ln. 21-25; p. 71, ln. 24 - p. 72, ln. 1. Mr. Harris did not have needle marks on his arms but the officer thought his behavior seemed erratic and that he might be under the influence of a controlled substance. *Id.* at p. 63, ln. 7-24. The officer had Mr. Harris exit the room while he looked at the syringes and the clear plastic baggy on the bed. *Id.* at p. 63, ln. 9-15. The officer exited the room to advise Mr. Harris that he was under arrest for possession of paraphernalia and controlled substances and Mr. Harris resisted. *Id.* at p. 63, ln. 12-15. During the search incident to Mr. Harris' arrest, the officer discovered a bag with what later tested positive for methamphetamine. CR. 15.

On July 22, 2013, the state charged Mr. Harris with felony possession of a controlled substance and misdemeanor charges of possession of paraphernalia and resisting and obstructing. CR 10- 12. Following preliminary hearing, Mr. Harris was bound over to the district court on those charges. CR 33-35. Mr. Harris moved to suppress arguing that the room was searched without a warrant, that he was arrested without probable cause and that all the fruits of that search and seizure must be suppressed. CR 41-42.

Following the hearing on the motion to suppress, the district court found Ms. Heard was unresponsive on the bed and the officer had reason to be concerned about physical violence so shortly after a report of an argument. Tr. Vol. 1 p. 98, ln. 4-16. The district court thus found that there was a compelling need to enter the room to check on Ms. Heard and the officer's entry into the room was justified on exigent circumstances. *Id.* at p. 98, ln. 17 - p. 99, ln. 1-16. The district court found that there was probable cause to arrest Mr. Harris for possession of paraphernalia



because the officer had seen him moving the cup where the needles were found and a controlled substance was found on Ms. Heard. *Id.* at p. 101, ln. 22 - p. 102, ln. 5. The district court denied Mr. Harris' motion to suppress. *Id.* at p. 102, ln. 6-9.

Mr. Harris pled guilty to possession of methamphetamine, reserving his right to appeal the district court's denial of his motion to suppress. CR 53, 56-58. The district court sentenced Mr. Harris to a unified term of five years with a minimum period of confinement of two years and retained jurisdiction for a period of up to one year. CR 75-79. This appeal follows.

### **III. ISSUE PRESENTED ON APPEAL**

1. Did the district court err in denying Mr. Harris' motion to suppress?

### **IV. ARGUMENT**

#### **THE DISTRICT COURT ERRED IN DENYING MR. HARRIS' MOTION TO SUPPRESS**

This Court applies a bifurcated standard of review to a trial court order denying a motion to suppress evidence. *State v. Purdum*, 147 Idaho 206, 207, 207 P.3d 182, 183 (2009); *State v. Watts*, 142 Idaho 230, 232, 127 P.3d 133, 135 (2005). When a decision on a motion to suppress is challenged, this Court accepts the trial court's factual findings if supported by substantial evidence but freely reviews the application of constitutional principles to those facts. *State v. Dycus*, 154 Idaho 456, 458, 299 P.3d 263, 265 (Ct. App. 2013); *State v. Gibson*, 141 Idaho 277, 281, 108 P.3d 424, 428 (Ct. App. 2005).

The Fourth Amendment to the United States Constitution and Article I, Section 17 of the Idaho Constitution protect people against unreasonable searches and seizures. When a search or a seizure occurs without a warrant, the government bears the burden of proving facts necessary to

establish an exception to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971); *Dycus*, 154 Idaho at 459, 299 P.3d at 266. Evidence obtained in violation of these constitutional protections must be suppressed in a criminal prosecution of the person whose rights were violated. *Dycus*, 154 Idaho at 459, 299 P.3d at 266; *State v. Curl*, 125 Idaho 224, 227, 869 P.2d 224, 227 (1993).

Here, Ms. Heard was laying in the bed only a few feet from where the officer stood in the doorway and there were neither reports nor signs of violence. Ms. Heard's responses – albeit groggy – to Mr. Harris' attempt to wake her dispelled any urgency. While the possibility that she was intoxicated or injured may have justified further investigation, there was no emergency requiring the officer's immediate entry into the room.<sup>1</sup> Even if the district court correctly determined that exigent circumstances justified the warrantless entry, there was no probable cause to believe Mr. Harris possessed drug paraphernalia with the intent to use. Accordingly, the district court erred in denying Mr. Harris' motion to suppress and the case must be remanded to allow him to withdraw his guilty plea.

**A. No Exigency Justified the Officer's Entry into Mr. Harris' Room**

The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. *United States v. United States District Court*, 407 U.S. 297, 313 (1972);

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<sup>1</sup> The security guard claimed to be able to see the syringes in the cup prior to entering the room. Tr. Vol. 1 p. 35, ln. 2-9. According to the guard, "the purpose for entering the room was to make sure there was no other paraphernalia in the room." *Id.* at p. 19, ln. 17-19. However, the security guard merely observed and the officer, who did not see the syringes prior to entering, decided to enter the room to check on Ms. Heard. *See id.* p. 18, ln. 16-19; p. 27, ln. 12-19. Further, the credibility of the security officer's claim to see the syringes from outside the room was contested and the district court relied entirely on the officer's belief there were exigent circumstances.

*State v. Reynolds*, 146 Idaho 466, 469, 197 P.3d 327, 330 (Ct. App. 2008). While the officer entered Mr. Harris' hotel room rather than his home, the Fourth Amendment protects places such as motel and hotel rooms to a similar extent as residences. See *United States v. Young*, 573 F.3d 711, 716 (9th Cir. 2009) (like a lessee of an apartment, a hotel guest does not lose his reasonable expectation of privacy in his hotel room just because he is detained or arrested by a police officer outside of his apartment, or hotel room); *United States v. Dorais*, 241 F.3d 1124, 1128 (9th Cir. 2001) (part of what a person purchases when he leases a hotel room is privacy for one's person and one's things); *United States v. Cormier*, 220 F.3d 1103, 1108-09 (9th Cir. 2000) (the Fourth Amendment protection against unreasonable searches and seizures is not limited to one's home, but also extends to such places as hotel or motel rooms).

Thus, an officer's warrantless entry into a residence is presumptively unreasonable and prohibited by the Fourth Amendment. *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984); *State v. Curl*, 125 Idaho 224, 225, 869 P.2d 224, 225 (1993). In such a circumstance, the burden is on the government to show the applicability of one of the few specifically established and well-delineated exceptions to the warrant requirement. *Reynolds*, 146 Idaho at 470, 197 P.3d at 331; *State v. Martinez*, 129 Idaho 426, 431, 925 P.2d 1125, 1130 (Ct. App. 1996). One of these exceptions include exigent circumstances. *Payton v. New York*, 445 U.S. 573, 589-90 (1980); *Reynolds*, 146 Idaho at 470, 197 P.3d at 331.

The necessity to protect or preserve life or avoid serious injury will legitimize an otherwise illegal intrusion. *State v. Wiedenheft*, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001). Such exigent circumstances exist if the facts reveal a compelling need for official action and no time to secure a warrant. *Wiedenheft*, 136 Idaho at 16, 27 P.3d at 875; *Reynolds*, 146

Idaho at 470, 197 P.3d at 331. A report of domestic violence does not per se amount to exigent circumstances and, instead, the question of whether exigent circumstances exist to justify the warrantless entry of a person's home is always dependent upon the particular facts and circumstances of each situation. *Wiedenheft*, 136 Idaho at 16, 27 P.3d at 875. The test for application of this warrant exception is whether the facts known to the agent at the time of entry, together with reasonable inferences, would warrant a reasonable belief that an exigency justified the intrusion. *State v. Barrett*, 138 Idaho 290, 293, 62 P.3d 214, 217 (Ct. App. 2003); *Reynolds*, 146 Idaho at 470, 197 P.3d at 331.

Here, the district court found that Ms. Heard was "unresponsive" on the bed. However, the undisputed testimony was that in response to Mr. Harris' efforts to wake Ms. Heard, she was extremely groggy, made some movement, mumbled and was semi-responsive. Thus, the district court's finding that Ms. Heard was entirely "unresponsive" is not supported by substantial evidence and erroneous.

Further, Ms. Heard's groggy responses to Mr. Harris' attempts to wake her, where there had been no reports of or signs of violence and the officer could plainly see Ms. Heard from where he stood only feet away in the open doorway, fall well short of circumstances creating a reasonable belief that immediate entry was necessary to protect or preserve life or avoid serious injury. Accordingly, the district court erred in denying the motion to suppress and all evidence that was discovered must be suppressed as fruit of the poisonous tree.

In *Reynolds*, police arrived at a residence to investigate an alleged domestic disturbance and observed the man was standing outside the door to the house, which was ajar. The officers entered the home without knocking or calling out to the woman. The Court of Appeals found that

the circumstances did not support a reasonable belief that *immediate* entry into the home was necessary and there was no sufficient excuse for the officers to deviate from the normal procedure of knocking or calling out to bring someone to the doorway for questioning. *Reynolds*, 146 Idaho at 471, 197 P.3d at 332. Similarly, in this case, while there may have been cause to wish to speak with Ms. Heard, the circumstances fail to support a reasonable belief that immediate entry was required to preserve or protect life.

In *Wiedenheft*, police responded to a domestic disturbance and the woman who opened the door had a red swollen area in the middle of her forehead, appeared to have been recently injured, was shaking slightly, had an unsteady voice, and was visibly upset. The Court found that exigent circumstances existed to enter the home when the woman refused to allow officers inside. *Wiedenheft*, 136 Idaho at 15, 27 P.3d at 874. In reaching this decision, the Court discussed a number of cases within other jurisdictions, in which the circumstances included visible injuries, signs of violence and reason to believe the perpetrator remained in the residence. *See Wiedenheft*, 136 Idaho 14, 16-17, 27 P.3d 873, 875-76 (Ct. App. 2001). Judge Scharzman specially concurred so as to “voice a note of caution and constitutional concern that use of such terminology as ‘exigent circumstances’ and ‘domestic violence’ does not . . . give police carte blanche to conduct a general exploratory search or protective sweep.” *Id.* at 17-18, 27 P.3d at 876-77.

Here, in contrast, the officer had a clear view of the room on approach and observed Mr. Harris wandering about while Ms. Heard lay on the bed right next to the door. Ms. Heard lay only feet away from the open door where the officer stood, there had been no reports that the couple engaged in a physical altercation and there was no blood or sign of physical violence on either Mr. Harris or Ms. Heard. Tr. Vol 1 p. 22, ln 15-19; p. 38, ln. 12-21; p. 67, ln. 12-17. At the

suppression hearing, the officer conceded that the situation did not appear dangerous when he arrived but testified that he has a “duty” whenever he responds to a “domestic” to make sure that both persons are okay and to speak to both parties. *Id.* at p. 59, ln. 14-19. Of course, the officer’s policy that he must speak with both persons does not create an exigency.

The officer started speaking with Mr. Harris in a conversational tone of voice and without knocking because he was “right there.” *Id.* at p. 55, ln. 1-15. It is thus not surprising that Ms. Heard did not wake up while the two conversed. While Ms. Heard’s groggy responses to Mr. Harris’ attempts to wake her might give rise to believe she had some injury or was intoxicated, it dispelled any concern that she was gravely injured such that an immediate response was necessary to save her life.

Indeed, the officer’s unwillingness to continue to allow Mr. Harris to wake her derived from his concern that Mr. Harris would be able to influence her rather than some concern that her life was threatened. When asked why the officer did not allow Mr. Harris to continue waking up Ms. Heard, the officer indicated he did not want Mr. Harris to whisper to Ms. Heard and that he felt it was important to keep his eyes on both of them because he did not want Mr. Harris to glare at Ms. Heard. Tr. Vol. 1 p. 62, ln. 2-20. There was no explanation as to why the officer did not simply raise his voice from where he stood only feet away and why it was necessary to enter the room to order her to get up. Exigent circumstances justify the warrantless entry when there is a compelling need for immediate action to protect or preserve life or avoid serious injury and do not justify such a warrantless intrusion to prevent Mr. Harris from whispering to or glaring at Ms. Heard.

In refusing to grant the motion to suppress, the district court found that the officer was

genuinely concerned for Ms. Heard's safety. However, the officer's subjective belief is insufficient as exigent circumstance is reviewed by an objective standard where courts determine whether the facts and inferences would warrant a person of reasonable caution in the belief that the action taken was appropriate. *See Barrett*, 138 Idaho at 293, 62 P.3d at 217.

With no reports or signs of physical violence, Ms. Heard's groggy response to Mr. Harris' attempt to wake her fell well short of establishing of exigent circumstances. Because the entry was unlawful, all evidence obtained following that entry, including the syringes, the controlled substance on Ms. Heard, Mr. Harris' resistance to the unlawful arrest and the methamphetamine found on his person, was fruit of the poisonous tree. Accordingly, the district court erred in denying the motion to suppress.

**B. The Officer Lacked Probable Cause to Believe That Mr. Harris' Possessed Paraphernalia or the Methamphetamine That Fell From Ms. Heard's Dress**

Even if exigent circumstances justified the officer's entry into the room, he lacked probable cause to believe that Mr. Harris possessed and intended to use the syringes observed in the cup. Accordingly, his arrest was unlawful and the methamphetamine found incident to his arrest must be suppressed.

A peace officer may make a warrantless arrest when a person has committed a public offense in the presence of the peace officer. I.C. § 19-603(1); *State v. Dycus*, 154 Idaho 456, 459, 299 P.3d 263, 266 (Ct. App. 2013). When making a lawful custodial arrest, law enforcement personnel are entitled to search an arrestee and the area immediately surrounding him. *Chimel v. California*, 395 U.S. 752 (1969); *State v. Pruss*, 145 Idaho 623, 628-29, 181 P.3d 1231, 1236 (2008).

To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest and then decide whether those historical facts amount to probable cause. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003); *State v. Gibson*, 141 Idaho 277, 282, 108 P.3d 424, 429 (Ct. App. 2005). Probable cause is the possession of information that would lead a person of ordinary care and prudence to believe or entertain an honest and strong presumption that such person is guilty. *State v. Julian*, 129 Idaho 133, 136, 922 P.2d 1059, 1062 (1996); *Gibson*, 141 Idaho at 282, 108 P.3d at 429. In analyzing whether probable cause existed, this Court must determine whether the facts available to the officers at the moment of the seizure warranted a person of reasonable caution to believe that the action taken was appropriate. *State v. Hobson*, 95 Idaho 920, 925, 523 P.2d 523, 528 (1974); *Gibson*, 141 Idaho at 282-83, 108 P.3d at 429-30. The facts making up a probable cause determination are viewed from an objective standpoint. *Julian*, 129 Idaho at 137, 922 P.2d at 1063; *Gibson*, 141 Idaho at 282-83, 108 P.3d at 429-30. The state has the burden of showing, based on the totality of the circumstances, the validity of any warrantless arrest. *Gibson*, 141 Idaho at 282-83, 108 P.3d at 429-30; *State v. Rodriguez*, 115 Idaho 1096, 1098, 772 P.2d 734, 736 (Ct. App. 1989).

Here, Mr. Harris was arrested for violating I.C. § 37-2734A, which prohibits any person from using or from possessing “with intent to use” drug paraphernalia. Upon entry, the officer observed two syringes floating in cup with red liquid, which he testified were consistent with what a person would use for medical purposes or to inject drops. Exhibit D. The officer did not testify that it was more probable that such syringes were used for medical purposes rather than drugs.

Further, both methamphetamine and needle marks were found on Ms. Heard, not Mr. Harris. Thus, even if it were more probable that the syringes were used for drugs rather than



medical purposes, the reasonable conclusion was that it was Ms. Heard that possessed the syringes with the intent to use them, not Mr. Harris.

In denying the motion to suppress, the district court noted that Mr. Harris was observed moving the cup on the dresser. However, Mr. Harris' knowledge of the syringes' presence establishes neither his intent to control nor use them. Further, while the officer testified that he arrested Mr. Harris for possessing the methamphetamine found on Ms. Heard, the district court made no findings in that regard and finding the drugs on Ms. Heard's person fails to establish probable cause that Mr. Harris used it.

The facts available to the officer fall short of justifying an honest and strong presumption that Mr. Harris was guilty of possessing the syringes with the intent to use them. Accordingly, Mr. Harris' arrest and the search incident thereto were unlawful.

## V. CONCLUSION

Mr. Harris respectfully asks this Court to reverse Mr. Harris' judgment of conviction and to remand this case for further proceedings.

Respectfully submitted this 25 day of February, 2015.

NEVIN, BENJAMIN, McKAY & BARTLETT LLP



Robyn Fyffe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of February, 2015, I caused two true and correct copies of the foregoing to be mailed to: Office of the Attorney General, Criminal Law Division, P.O. Box 83720, Boise, ID 83720-0010.

A handwritten signature in black ink, appearing to read 'Robyn Fyffe', written over a horizontal line.

Robyn Fyffe